

FEDERAL PUBLIC DEFENDER
SOUTHERN DISTRICT OF TEXAS

We of the Federal Public Defender's Office consider it part of our mission under the Criminal Justice Act (CJA or "the Act") to help the local bar practice before the federal courts. You may never have the privilege of representing an accused in federal court by appointment under the CJA or otherwise, but if you do, consider us a resource in federal criminal cases. Our practice is exclusively federal criminal law. Our insights into prosecutors, judges, criminal and appellate procedure, and substantive law may prove invaluable to you. We also share our brief banks and samples of our motions. A list of our headquarters and branch office supervisors with addresses and phone numbers is attached as Annex A.

We hope the following comments are a useful overview of our office and the Criminal Justice Act, which since 1964 has been a vital part of our criminal justice system.

OFFICE OF THE FEDERAL PUBLIC DEFENDER

The office of the Federal Public Defender (FPD) is the principal conveyor of criminal defense services to poor people accused of federal crimes in the Southern District of Texas. Through a staff of dedicated and experienced Assistant FPD's, investigators, and support personnel, the office provides trial and appellate representation for about 75% of those criminal defendants found eligible for appointed counsel in the District. Under international treaties, the office also represents alien convicts, state or federal, and United States citizens convicted abroad who seek transfer to their native countries for the completion of their sentences.

The Federal Public Defender is an officer of the Judicial Branch and is appointed by the United States Court of Appeals for the Fifth Circuit for a four-year term. By placing the FPD in the judiciary, the CJA precludes a conflict of interest between the United States Attorney (Executive Branch) and the Federal Defender. The Federal Public Defender appoints each of his assistants, and they serve at his pleasure. All court appointments to the office are made in the name of the Federal Public Defender rather than to individual lawyers.

The FPD maintains fully staffed offices in Houston (headquarters), Brownsville, Corpus Christi, Laredo, and McAllen. Houston also supports the Galveston and Victoria Divisions of the court since these divisions have relatively small criminal dockets. The Houston office provides all appellate services.

Although Assistant FPD's are salaried federal employees, the office functions as a private criminal defense firm with respect to the representation of its clients. Our trial and appellate record debunks the popular misconception that public defenders are "cop out" or "dump truck" organizations. This office fulfills its constitutional responsibility to its clients - zealous, ethical, and effective representation. The office has been fortunate enough to appear twice for oral argument before the Supreme Court of the United States and hundreds of times before the United States Court of Appeals for the Fifth Circuit. Among the distinguished "alumni" of our office are three magistrate judges, The Honorable Dorina Ramos in McAllen, The Honorable Felix Recio in Brownsville, The Honorable Adriana Arce-Flores in Laredo, and

one former magistrate and current bankruptcy judge, The Honorable Karen Brown in Houston.

PANEL COUNSEL UNDER THE CRIMINAL JUSTICE ACT

Statutory authority for the appointment of private counsel is found in the same place as the authority to create the FPD: the Criminal Justice Act of 1964 (CJA), codified at Section 3006A, Title 18, United States Code. The CJA requires the appointment of a “substantial” number of private counsel from the local bar. Under current Southern District and Fifth Circuit plans, magistrate judges qualify members of the local bar to serve as the CJA Panel. The court appoints CJA Panel counsel in roughly 25% of the cases district-wide, frequently in multi-defendant cases where the FPD already represents a defendant or where the FPD otherwise has a conflict of interest.

THE CRIMINAL JUSTICE ACT

The court shall appoint counsel for any financially eligible person who is charged with a federal felony or serious misdemeanor; is a juvenile accused of delinquency; is charged with a violation of terms of probation or supervised release; is under arrest; is entitled to counsel in parole proceedings; is subject to a mental condition hearing; is in custody as a material witness; is entitled to appointment of counsel under the Sixth Amendment; or faces loss of liberty in case, and federal law requires appointment of counsel; or is an offender pending consent to transfer service of a sentence under treaty either from or to the United States. 18 U.S.C. § 306A(a)(1). Representation may be required for some persons charged with less serious federal misdemeanors or infractions, or who are applicants for relief under a writ of habeas corpus under 28 U.S.C. §§ 2241, 2254, or 2255.

The Act also provides for investigative, expert and other services (forensic psychiatrists and psychologists, chemists, handwriting experts, etc.) needed for effective representation of the appointed client. 18 U.S.C. § 3006A(e). While counsel may expend up to \$300 without prior authorization for these services, the preferred method except in an emergency is to make an *ex parte* application to the court for these funds. If the services are found to be necessary, the district judge or magistrate judge shall authorize counsel to obtain the services. Among the services available through an *ex parte* application is the issuance and service by the United States Marshal of witness subpoenas. See Fed. R. Crim. P. 17(b).

The current rate for compensation of appointed counsel for representation is set at \$70 an hour for in-court time and \$50 an hour for out-of-court time. Ceilings are imposed at \$5,200 for felonies, \$1,500 for misdemeanors, \$3,700 for appeals in each court, and \$1,200 for other proceedings. 18 U.S.C. § 3006(d). The Court may waive the maximum amounts in extended or complex representations if the court certifies that excess payment is necessary and the chief judge of the Court of Appeals approves.

An appointment of counsel is not for life but does continue, according to the Fifth Circuit’s CJA plan, through all direct appeals up to and including a petition for writ of

certiorari in the Supreme Court. See 18 U.S.C. §§ 3006A(c) and (d). Determination of eligibility is a judicial function usually performed by the magistrate judge.

WHO'S WHO IN THE FPD

In the first edition of this section in 1987 it was possible to list every lawyer in the office with a brief biography, all nine of them. In response to the explosion in federal criminal prosecutions in the last decade of the 20th Century, we will have 45 attorney positions for Fiscal Year 2001 in the Southern District of Texas. Accordingly, this section profiles only the senior lawyers in the office.

Roland E. Dahlin, II, the Federal Public Defender for the Southern District of Texas. Roland has held this office since its creation in 1974. Prior to his appointment he served as district court chief prosecutor, chief of the misdemeanor section, and chief of the operations bureau of the Harris County District Attorney's Office. His official duty station is Houston.

Tom Berg is the First Assistant Federal Public Defender and has been on the staff since 1982. Tom is board-certified in criminal law by the Texas Board of Legal Specialization. He also is stationed in Houston but supervises the branch offices in addition to taking a court docket. Tom served as a military prosecutor in the U.S. Army during Desert Shield/Desert Storm and more recently in Bosnia.

Michael Sokolow is senior litigation counsel and chief of the appellate section. He supervises two other appellate attorneys. Michael clerked for Judge Alvin Rubin on the Fifth Circuit Court of Appeals and was in big firm private practice in Dallas and Houston before joining the defender system in 197. Michael speaks nationally on legal ethics.

Margy Meyers is the supervisory assistant FPD for Houston. She also is board certified in criminal law. Margy clerked for now Chief Judge Carolyn King on the Fifth Circuit before joining the office in 1983. Margy is a nationally known expert on sentencing guidelines.

Jeff Wilde is the supervisory assistant for Brownsville. He came on board in 1990 after several years in private practice and a brief stint as an assistant Texas Attorney General. Jeff became the supervisory assistant in 1999 upon the retirement of Juan Gavito who headed the branch for 25 years.

Jose Gonzalez-Falla is the supervisory assistant in Corpus Christi. He started in the Houston office in 1990 after a tour of duty with the Harris County District Attorney's Office. Jose returned to his hometown of Corpus Christi to run our branch office shortly after it opened a few years later. Jose is an effective and popular speaker on trial advocacy and is board-certified in criminal law.

Marissa Perez-Garcia came to the Laredo office in 1991 after working for the Staff Counsel for Inmates at the Texas Department of Criminal Justice. Marissa became the supervisory assistant in 1998. She also is board-certified in criminal law.

Tom Lindenmuth is the supervisory assistant for McAllen. He has been on board since 1986 and in-charge of the McAllen office since it opened in 1987. Tom was in private practice and previously served as an assistant district attorney in Bexar County.

DIRECTORY
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